
**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS INTRANETWORKS, INC.)	
v.)	
ILLINOIS BELL TELEPHONE COMPANY)	ICC NO. 01-0572
(AMERITECH ILLINOIS))	
)	
VERIFIED COMPLAINT AND REQUEST FOR EMERGENCY RELIEF.)	

**RESPONSE TO VERIFIED COMPLAINT
AND REQUEST FOR EMERGENCY RELIEF**

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), through its attorneys, and responds to the Verified Complaint and Request for Emergency Relief ("Complaint") filed on August 29, 2001 by Illinois Intranetworks, Inc. ("Intranetworks"). The Complaint was filed pursuant to Sections 13-514 and 13-515 (e) of the Public Utilities Act ("Act"), 220 ILCS 5/13-514 and 5/13-515 (e). Intranetworks also seeks additional relief under Section 13-516 of the Act, 220, ILCS 5/13-516. In large part, Staff supports the Complaint, but disagrees in part as to the appropriate relief to be granted in this proceeding.

Section 13-515 (e) Requirements

Intranetworks' Complaint was filed under Section 13-514, asserting anti-competitive behavior by Ameritech Illinois ("Ameritech"). The allegations center on Ameritech's denial of Intranetworks' request to "opt into" reciprocal compensation provisions in an existing interconnection agreement (the "Focal Agreement"). Intranetworks further brings this case under the emergency relief provisions of Section 13-515 (e). The Section provides, in part, that:

If the alleged violation has a substantial adverse effect on the ability of the complainant to provide service to customers, the complainant may include in its complaint a request for emergency relief. ... An order for emergency relief may be granted, without an evidentiary hearing, upon a verified factual showing that the party seeking relief will likely succeed on the merits, that the party will suffer irreparable harm in its ability to serve customers if emergency relief is not granted, and that the order is in the public interest.

Based on the allegations in the Complaint, Staff believes that Intranetworks has established a *prima facie* case for each of the statutorily required elements.¹ Thus, if the presiding Administrative Law Judge (“ALJ”) determines that Ameritech’s response, if any, is inadequate to rebut Complainant’s verified allegations, then Intranetworks is entitled to emergency relief pursuant to Section 13-515 (e).

Asserted Claims of Anti-Competitive Behavior Under Section 13-514

Intranetworks asserts that Ameritech’s behavior constitutes three separate types of anti-competitive behavior under Section 13-514:

(6) unreasonably acting or failing to act in a manner that has a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers;

(8) violating the terms of or unreasonably delaying implementation of an interconnection agreement entered into pursuant to Section 252 of the federal Telecommunications Act of 1996 [“TA 96”]...;

(10) unreasonably failing to offer network elements that the Commission or the Federal Communications Commission [“FCC”] has determined must be offered on an unbundled basis....

Staff believes that the Complainant’s allegations, even taken as un rebutted, do not

¹ Due to the truncated nature of this proceeding, Staff will have no opportunity to review and respond to any arguments presented by Ameritech in rebuttal to Intranetworks’ assertions. Thus, Staff’s positions have been formed solely by its review and consideration of Intranetworks’ assertions. It is possible that Ameritech will sufficiently rebut Intranetworks’ case to convince the ALJ and the Commission that no violations of Section 13-514 have occurred. The ALJ and the Commission are the only ones who will have the opportunity to review and weigh both sides of the arguments.

support findings of anti-competitive behavior under subsections (8) and (10).

As Staff reads (8), the asserted violation must be to an *already existing* intraconnection agreement, i.e., an “agreement entered into” under TA 96. Given that Intranetworks is a recently Certified telecommunications carrier in Illinois and this is the first interconnection agreement it has sought, there is no established agreement between Ameritech and Intranetworks that Ameritech could violate in the manner described under (8).

Section (10) addresses an Incumbent carrier’s (“ILEC”) failure to provide network elements. Staff disagrees with Complainant that this provision was meant to redress indirect effects of the parties’ failure to come to terms on an interconnection agreement. If that were the appropriate interpretation, then every case in which an agreement was not easily reached could be shoehorned under this provision. Staff believes, rather, that (10) is meant to address situations where an ILEC’s actions directly result in a failure to offer unbundled network elements “in a manner consistent with” this Commission’s or the FCC’s orders or rules. Intranetworks has made no allegations that would support that type of finding. Thus, Staff believes that (10) does not provide a basis for finding anti-competitive behavior under this Complaint.

However, Staff agrees that Ameritech’s behavior, as alleged by Intranetworks, is anti-competitive under (6). That is, if the allegations are true, then Ameritech has unreasonably acted or failed to act in a manner that has caused a substantial adverse effect on Intranetworks’ ability to provide service as a telecommunications carrier.

The “opt-in” provision contained in Section 252(i) of TA 96 entitles a carrier to adopt any interconnection service or network provided under an agreement approved

under Section 252 of the 1996 Act on the same terms and conditions as those provided in the agreement. Intranetworks, therefore, was entitled under the 1996 Act to opt-into an existing agreement. In this case Intranetworks requested to opt into an agreement between Focal and Ameritech.

Once this right was exercised, Intranetworks rightfully should have had the opportunity to begin implementing its business plan and making arrangements with Ameritech to work out the technical details associated with implementation of the interconnection agreement. By denying Intranetworks its opt-in right, Ameritech has undeniably forced Intranetworks to place its business plans on hold until such time as this Commission affirms Intranetworks opt-in rights. This action clearly impedes Intranetworks' ability to provide service to its customers and therefore is anticompetitive under Section 13-514 (6).

Staff recognizes that the recent FCC ISP-Bound Traffic Order (*Implementation of the Local Competition Provisions in the Telecommunication Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*; FCC Docket 96-98) revokes opt-in rights as they have applied to reciprocal compensation rates for ISP-bound traffic. However, the FCC prohibition clearly and unequivocally indicates that this right terminated on the date of the orders publication in the Federal Register. (FCC ISP-Bound Traffic Order, Par. 82 and footnote 154.) The publication date (and, thus, the cutoff date for opt-in rights vis-à-vis reciprocal compensation provisions) was May 15, 2001. Intranetworks invoked its opt-in rights on May 3, 2001. Therefore, denial of Intranetworks' opt-in rights based on the FCC order would clearly contradict the plain language of the FCC order.

Moreover, Section 13-514 also contains the following language:

A telecommunications carrier shall not knowingly impede the development of competition in any telecommunications service market. The following prohibited actions are considered per se impediments to the development of competition; *however, the Commission is not limited in any manner to these enumerated impediments and may consider other actions which impede competition to be prohibited....* (Emphasis supplied.)

This very broad language makes clear the General Assembly's strong commitment to preventing carriers from impeding the development of competitive telecommunications markets in Illinois. It is clear that the *prima facie* case presented by Intranetworks establishes an impediment to competition and should be treated accordingly under the Act.

Appropriate Relief

If the ALJ determines that a Section 13-514 violation has occurred, then Staff believes that the appropriate remedy is to direct Ameritech to make available to Intranetworks the terms and conditions of the interconnection agreement between Ameritech and Focal Telecommunications (the "Focal Agreement" referred to by Intranetworks in Paragraph 7 of its Complaint).

However, Staff believes it is inappropriate at this time to order Ameritech to then amend the Focal Agreement with a provision from a separate interconnection agreement with Z-Tel. Among other reasons, Intranetworks has not made a single allegation that the failure to obtain the Z-Tel provision amounts to a violation of Section 13-514. No relief can be granted where the need for it has not been established.

In addition, Staff believes it is inappropriate to grant any monetary relief or to impose any level of financial penalty in this setting. Intranetworks has chosen to bring its Complaint under the terms of Section 13-515 (e). Under this provision, the ALJ is to decide the case within 2 days of the Complaint's filing. The Commission has the option

of entering its own Order within two days of the issuance of the ALJ's decision.² The Complaint can be, and most likely will be, decided on the pleadings. Under these circumstances, the Respondent most likely will not have an adequate opportunity to respond to the issues of the financial penalties and remuneration. Thus, for due process concerns, such relief should not be granted within the scope of this proceeding. Moreover, there is an additional impediment to the award of damages, penalties, and remuneration. Complainant has provided no verified allegations to support any such requested relief.

WHEREFORE, for the forgoing reasons, Staff believes a finding that Ameritech engaged in anti-competitive behavior pursuant to the general language of Section 13-514, and the specific provision of Section 13-514 (6) is appropriate. The Commission should direct Ameritech to make available to Intranetworks the terms and conditions of the interconnection agreement known as the "Focal Agreement."

Respectfully submitted,

/s/ _____
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² Intranetworks has indicated that, pursuant to Ill. Admin. Code 766.100 a), it will waive this latter two-day time period for the Commission's review. However, 766.100 b) indicates that such a waiver is not effective unless the Respondent indicates that it will agree to the waiver. Ameritech's Response will have to be reviewed to determine whether it agrees to, and thus effectuates, the waiver